S. HRG. 99-699

TO ALLOW RAILROAD AND COLLEGE POLICE ACCESS TO FEDERAL CRIMINAL RECORDS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1203

A BILL TO AMEND SECTION 534 OF TITLE 28, UNITED STATES CODE, TO ALLOW RAILROAD POLICE AND PRIVATE UNIVERSITY OR COLLEGE POLICE ACCESS TO FEDERAL GOVERNMENT CRIMINAL IDENTIFICATION RECORDS

JANUARY 22, 1986

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TO ALLOW RAILROAD AND COLLEGE POLICE ACCESS TO FEDERAL CRIMINAL RECORDS

WEDNESDAY, JANUARY 22, 1986

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Strom Thurmond (chairman of the full committee) presiding.

Also present: Senator Specter.

Staff present: Thad Strom, counsel; and Scott Green, minority counsel.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. The committee will come to order. I regret a little delay in starting, but I just got back from the White House.

We have a number of witnesses here today. Panel one: Lawrence K. York, Assistant Director, Identification Division, FBI, if you want to come up and have a seat; Mr. Melvin D. Mercer, Jr., Section Chief, Identification Division, FBI; Mr. David T. Mitchell, Technical Services Division, National Crime Information Center Section.

Now, I want to make a little statement before we begin. This morning, the subcommittee begins consideration of S. 1203, which allows private university or college police access to the National Crime Information Center, Federal Government criminal identification records.

It is my hope that this hearing will emphasize the importance of having access to NCIC records for these groups to provide an effective tool for carrying out their law enforcement responsibilities.

This legislation will allow railroad police and private university or college police access to the National Crime Information Center, which contains Federal Government criminal identification records.

This information was restricted by Federal regulation in 1975 to organizations which are recognized specifically as agencies of either the Federal or State government. Prior to this limitation, railroad police and university and college police had total access across most of the Nation to all criminal arrest files maintained by the Federal Bureau of Investigation.

In fact, the only places where access did not exist in the early days of NCIC were those States not participating because of their budgetary restraints. The file contributed immeasurably toward the ability of the participating departments to perform their services in protecting cargo shipments and the welfare of patrons and campus students, alike.

After the restriction, an anomaly existed. Universities and colleges which were recognized as State agencies and had a police force continued to receive approval for receiving the necessary information.

Those police forces who represented large campuses across the United States on behalf of private universities or colleges were denied access to the criminal history files, since they were regarded as private rather than State agencies.

Railroad police were confronted with a similar circumstance. Each year, the President's Conference on Transportation charged the railroad police to enforce strictly Federal regulations governing cargo shipments. However, they were restricted access to criminal history records that would enable them to carry out this direction.

In other words, the Justice Department was advocating a strong stand to protect cargo movements and needed the railroad police to help them achieve it, but denied them access to the most valuable tool for their assistance.

The efforts of the railroad police and the university and college police to regain access to the NCIC files were joined in 1982 by the International Association of Chiefs of Police.

In a letter to Mr. Norman Chadwick, executive director of the IACP, Director of the FBI William Webster stated that he does not oppose Federal criminal history access by those agencies—namely, the railroad police and university and college police—in the many States where they are granted full peace officer status by State statute. He further wrote that he thinks it incongruous that such a legal prohibition exists.

Legal counsel for the Law Enforcement Assistance Administration [LEAA] supported that statement. The LEAA had determined in their early days that railroad police were, in fact, a part of the criminal justice spectrum in all States in which they had full police powers granted by the State government, even though they were not recognized as State agencies. Further, the railroad police, in States where they were so empowered, could participate in any LEAA-funded program without jeopardizing the funding of that program.

This legislation would not open the criminal files to all groups or institutions that employ any form of security officer, but rather is limited to railroad police and university or college police who perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to an administration of criminal justice.

This amendment mandates that each police department or agency meet the minimum standards for a police officer in their respective States. This is the same criteria which applies to police forces which are recognized as State agencies and have access to the NCIC files now.

I would also note that there are over 34,000 railroad police and university and college officers in the United States commissioned in nearly all of the States within the continent who do enforce the law.

Railroad police, in particular, ensure passenger/patron safety, protect tenants and properties, and protect the billion-dollar railroad movements of freight and valuable commodities across the land.

University police are charged with protecting the vast investments in educational facilities, properties, roads, the welfare of students and faculty, tenants, service people, and members of the general public who visit these campuses.

Since both the railroad police and the university and college police function in areas where the general public must spend a portion of their every day, and nearly all of them are covered by mandatory police training laws and attend State police academies, access to criminal history files by both of these entities would provide much-needed law enforcement services to these police officers and to the communities in which they are located

We have several distinguished witnesses with us today. We welcome you and look forward to hearing your testimony on this important issue. I ask that you make your entire written statement available for the record and limit your summary remarks to 5 minutes.

I have a statement by Senator Mathias which, without objection, will be placed in the record along with a copy of S. 1203.

[The following was received for the record:]

PREPARED STATEMENT OF HON. CHARLES MCC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

I would like to thank the Chairman for conducting today's hearing on S. 1203, a bill that addresses access to Federal criminal identification records. As the Chairman knows, in May 1983, as chairman of the Judiciary's Committee's subcommittee with jurisdiction over privacy issues, I presided over a similar hearing. Thus, while other responsibilities prevent me from attending today's hearing, I look forward to reviewing the hearing record and, with the Chairman's permission, will pose written questions to the witnesses for response at a later date.

It is critical to recognize at the outset that several fundamental rights and interests are involved when criminal history records are accumulated and distributed in a national system. A national criminal history records system that speeds the exchange of information about an individual's past contacts with the criminal justice system ought to lead to better decision making in many settings. Society is likely to benefit greatly from accurate, regularly updated information accessible only to the appropriate officials carrying out authorized functions. However, we know of too many instances in which individuals have suffered some injustice as a results of computerized criminal records that relayed incorrect information. Our 1983 hearing record contains disturbing testimony indicating that some information from "rap" sheets is not collected, some is inserted inaccurately, and some is retained long after it becomes stale. Because incorrect criminal history information can jeopardize a citizen's right to privacy and due process, as well as the presumption of innocence, it is incumbent upon us to proceed cautiously in this field.

I know that many dedicated public servants at the FBI and in State criminal records repositories have worked tirelessly to correct data quality and security. I am anxious to learn about how they have improved data gathering capabilities and dispelled the criticisms that have been summarized as: "Garbage in, garbage out." However, I am also concerned that the stakes involved provide very little room for error. It is unfortunate but true that many uf us tend to believe everything we see on a neatly organized, state-of-the-art computer printout. Thus, a printout indicating that an individual has had some contact with law enforcement officials can become an irrefutable scarlet letter. It takes too long time to undo the damage after

police, prosecutors and judges make erroneous decisions by relying on faulty information.

One of the principles underlying the recent developments involving our national criminal history records is that access to the system should be limited to law enforcement agencies accountable to the public. While this policy has never been cast in stone, it provides a reasonable interim rule until a more detailed policy for non-criminal justice access is developed. Unfortunately, Congress has been asked repeatedly to erode this clear principle by making exceptions; exceptions for government security investigations, for securities dealers, for operators of nuclear power plants, and, now, for certain quasi-public police forces and railway police. When exceptions are made after careful scrutiny of the need for access and with adequate safeguards against misuse of this highly sensitive information, I have supported them. But the fact that Congress generally approves these exceptions must not become an excuse for wholesome abandonment of the underlying principle. Perhaps the time has come to move beyond the swiss-cheese approach that seems to govern access to criminal history records, and toward a clear Congressional policy that will serve the interests of law enforcement, privacy and efficiency alike.

II

99TH CONGRESS
1ST SESSION

S. 1203

To amend section 534 of title 28, United States Code, to allow railroad police and private university or college police access to Federal Government criminal identification records.

IN THE SENATE OF THE UNITED STATES

MAY 23 (legislative day, MAY 15), 1985

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend section 534 of title 28, United States Code, to allow railroad police and private university or college police access to Federal Government criminal identification records.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 534 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) For purposes of this section, the term 'other institutions' includes—

"(1) railroad police departments which perform the administration of criminal justice pursuant to a

State statute and which allocate a substantial part of their annual budget to the administration of criminal justice; and

"(2) police departments of private colleges or universities which perform the administration of criminal justice pursuant to a State statute and which allocate a substantial part of their annual budget to the administration of criminal justice.".

The CHAIRMAN. Now, I had an emergency call a few minutes ago. I am going to have to stop for just 1 minute. We will take a brief recess.

[A recess was taken.]

The CHAIRMAN. You gentlemen may proceed now.

STATEMENT OF LAWRENCE K. YORK, ASSISTANT DIRECTOR, IDENTIFICATION DIVISION, ACCOMPANIED BY MELVIN D. MERCER, JR., SECTION CHIEF, RECORDING AND POSTING SECTIONS, IDENTIFICATION DIVISION, AND DAVID T. MITCHELL, SUPERVISORY SPECIAL AGENT, NATIONAL CRIME INFORMATION CENTER, FEDERAL BUREAU OF INVESTIGATION

Mr. YORK. Mr. Chairman, my name is Lawrence K. York. I am Assistant Director in Charge of the FBI's Identification Division, FBI Headquarters. I have with me today Melvin Mercer, Section Chief of the Recording and Posting Sections of the Identification Division, and David Mitchell, Supervisory Special Agent in the National Crime Information Center at headquarters.

I appreciate this opportunity to appear before you today to discuss S. 1203, and if you have no objections, I would like to summarize my remarks for you.

S. 1203 is described in the bill's preamble as the authority for railroad police and private university or college police to access Federal Government criminal identification records.

In our view of the bill, it would not only authorize the Department of Justice to exchange criminal identification records, but would address its authority to exchange with the specified private police, all records acquired and preserved by the Department pursuant to title 28, United States Code, section 534.

This section provides that the Attorney General shall acquire, collect, classify and preserve identification, criminal identification, crime and other records, and also records which would assist in the identification of a deceased individual or information which would assist in the location of any missing person.

The section also provides that the Attorney General shall exchange such records and information with authorized officials of the Federal Government, the States, cities, and penal and other institutions.

This collection and exchange of records is accomplished through the work of the FBI Identification Division and/or the National Crime Information Center. S. 1203 amends this section to provide that the term "other institutions" with whom the Federal Government can exchange information is intended to include railroad police departments performing criminal justice functions pursuant to State law and police departments of private colleges and universities which perform certain criminal justice functions pursuant to State law.

This change makes it clear that these unique private law enforcement authorities are able to effectively fulfill their responsibilities by having access to criminal history information, wanted person records, missing person information, and other records maintained pursuant to 28 U.S.C. 534.

Although the Department supports the bill as written, there is concern that some confusion might exist with regard to the intended breadth of the bill. In the preamble of the bill and in the May 23, 1985, Congressional Record, the language focuses only on the bill's purpose in giving the Department authority to exchange criminal history records with the railroad police and the private university police.

The private police not only need access to criminal history information, but to information concerning wanted persons, missing persons, stolen vehicles, and so forth. To avoid confusion, the bill's preamble should be modified to include access to crime and other records.

In addition, further discussion on the bill should address the broader authority of these private police agencies to access records maintained pursuant to 28 U.S.C. 534.

In conclusion, this bill clarifies that these private police departments are authorized access to the above-mentioned Department of Justice records. The Department believes that the criminal justice and law enforcement needs of the railroad police and campus police are best served by access to these records. Therefore, the Department recommends enactment of this legislation.

This concludes my statement, sir, and we will be happy to answer questions of the committee concerning the bill.

The CHAIRMAN. Thank you very much. So the Department of Justice and the FBI do approve of the bill as I construe from your statement?

Mr. YORK. Yes, sir.

The CHAIRMAN. Now, to your knowledge, have the public university police ever abused or misused their access to NCIC records, and do you know of any abuse of this data by private university and college police officers or railroad police officers?

Mr. YORK. No, sir, I am not aware of any abuse of the records maintained by the Department by private campus police or by railroad police.

The CHAIRMAN. I observed in your written testimony that you have suggested that this legislation be modified to provide these entities access to data other than criminal history within the NCIC files

It is my understanding from the Federal Register dated Wednesday, September 16, 1981, on page 46025, that this information is already available to nongovernmental agencies that meet the criteria set forth on that page. Is that correct?

Mr. YORK. That is correct, Mr. Chairman, but that access to crime and other records is currently under review, under legal review.

The CHAIRMAN. What I would like to know is are you recommending any change in the bill as I introduced it.

Mr. YORK. The only recommendation we would have would be that the preamble be broadened to include crime and all other records maintained pursuant to 28 U.S.C. 534.

The CHAIRMAN. Would you mind conferring with the staff member here after the meeting is over to suggest any change that you have in mind?

Mr. Mitchell, you are responsible for gathering the information which is contained in the NCIC records, are you not?

Mr. MITCHELL. Yes, sir, I am.

The CHAIRMAN Do you have any statement to make in connection with this matter?

Mr. MITCHELL. No, sir, not particularly. I would like to say, however, that we have a fairly extensive audit program where we review the use of criminal history data by the public police agencies now. It would be no problem to extend that audit program to the private police agencies to ensure that the information was properly used.

The CHAIRMAN. As far as you know, there is no objection to the passage of this bill and you see no pitfall from its passage, do you?

Mr. MITCHELL. No, sir.

The CHAIRMAN. You heard the suggestion about some modification, that it might improve the bill. Do you agree with that, or have you had a chance to look into it?

Mr. MITCHELL Yes, sir, I think it would improve the bill also.

The CHAIRMAN. Thank you very much.

Now, Mr. Mercer, you heard the questions I asked these gentlemen. Do you have anything to add to this matter?

Mr. MERCER. No; with the modification suggested, the FBI would be completely in favor of passage of the bill.

The CHAIRMAN. You are in accord with the statements of the two previous witnesses?

Mr. MERCER. Yes, I am.

The CHAIRMAN. And therefore you support the bill, I understand?

Mr. MERCER. Yes.

The CHAIRMAN. Thank you very much. I want to thank all of you gentlemen for your appearance here. I think that concludes the testimony so far as you are concerned and you are now excused, unless you wish to remain. You are welcome to leave.

Mr. YORK. Thank you, Senator.

[Prepared statement and responses to written questions follow:]

Prepared Statement of Lawrence K. York

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss S.1203. S.1203 is described in the bill's preamble as the authority for railroad police and private university or college police to access Federal Government criminal identification records. In our review of the bill we believe that it would not only authorize the Department of Justice to exchange criminal identification records, but would address its authority to exchange with the specified private police all records acquired and preserved by the Department pursuant to Title 28, United States Code (U.S.C.), Section 534.

Currently, 28 U.S.C. 534 provides that, "The Attorney General shall acquire, collect, classify, and preserve identification, criminal identification, crime and other records" [subsection (a) (1)], records which would assist in the identification of a deceased individual [subsection (a) (2)], or information which would assist in the location of any missing person [subsection (a) (3)]. Subsection (a) (4) provides that, "The Attorney General shall exchange such records and information with, and for the official use of authorized officials of the Federal Government, the States, cities, and penal and other institutions." This language in part provides the authority by which the FBI collects and exchanges criminal history information, information pertaining to wanted persons, missing persons, stolen vehicles, etc. This collection and exchange of records is accomplished through the work of the FBI Identification Division and/or the National Crime Information Center (NCIC). S.1203 amends this section to provide that the term "other institutions" with whom the Federal Government can exchange information as set forth in subsection (a) (4) is intended to include railroad police departments performing criminal justice functions pursuant to state law and police departments of private colleges or universities which perform certain criminal justice functions

pursuant to state law. This change makes it clear that these unique private law enforcement authorities are able to effectively fulfill their responsibilities by having access to criminal history information, wanted person records, missing persons information and other records maintained pursuant t 28 U.S.C. 534.

Although the Department supports the bill as written, there is concern that some confusion might exist with regard to the intended breadth of the bill. In the bill's preamble and in the May 23, 1985, Congressional Record, the language focuses only on the bill's purpose in giving the Department the authority to exchange criminal history records with the railroad police and the private university police. The private police not only need access to criminal history information, but to information concerning wanted persons, missing persons, stolen vehicles, etc. To avoid confusion, the purpose of the bill as set forth in the preamble should be modified to also include the authority of these law enforcement authorities to access crime and other records. In addition, any further discussion on the bill should address the broader authority of the railroad and private college police to access records maintained pursuant to 28 U.S.C. 534.

In conclusion, this bill clarifies that these private police departments are authorized access to the above-mentioned Department of Justice records. The Department believes that the criminal justice and law enforcement needs of the railroad police and campus police are best served by access to these records. Therefore, the Department recommends enactment of this legislation.

This concludes my formal statement. We will be happy to answer any of the Committee's questions concerning this Bill.

RESPONSES OF THE FBI TO WRITTEN QUESTIONS FROM SENATOR SPECTER

QUESTION 1:

This legislation would allow railroad police and private university or college police access to the National Crime Information Center (NCIC). How will this bill change current practices? Will the bill give these police forces access broader than they had prior to the 1975 Federal regulation restricting access?

ANSWER:

In 1975, the Department of Justice established regulations to govern the dissemination of criminal record and criminal history information. These regulations were intended to better protect the privacy of individuals who may be included in the records of the FBI and to preserve legitimate law enforcement needs to access such records. These regulations which appear in Title 28, Code of Federal Regulations, Section 20, define a criminal justice agency as a governmental agency which performs the administration of criminal justice pursuant to statute and allocates a substantial part of its annual budget to the administration of justice. Shortly after these regulations were adopted, the authority of railroad and private university police to access FBI criminal history records came under close scrutiny. That issue was finally resolved by a June 22, 1978 opinion from the Office of Legal Counsel, Department of Justice which provided that Title 28, United States Code, Section 534 limited the dissemination of criminal history information to governmental entities.

Prior to 1975, railroad and other private police entities could access the NCIC Computerized Criminal History file and other NCIC files as well as criminal record information in the Identification Division. Since that time, a few additional files have been added to the NCIC and the Computerized Criminal History file has been replaced by the Interstate Identification Index (III).

Currently, railroad and private college police are permitted access to NCIC "hot files," e.g., wanted persons, missing persons, stolen vehicles, etc. However, the question of the authority for this access is now under legal review. These private police entities are not allowed access to criminal history record information through either the NCIC III or the FBI Identification Division. (Such access is allowed to public university police which are considered governmental entities and have criminal justice authority pursuant to state law.) This bill would amend Title 28, United States Code, Section 534 to provide that records maintained and disseminated pursuant to that Section can be exchanged with certain railroad and private college police as well as governmental criminal justice agencies.

QUESTION 2:

What circumstances, if any, are different today than at the time the 1975 regulation was promulgated? During the past decade, has there been a change in what constitutes "state agencies" versus "private agencies" for the purposes of this bill?

ANSWER:

The development of the National Crime Information Center (NCIC), state criminal record systems, and the FBI Identification Division has made the exchange of criminal history records, wanted and missing person information, stolen vehicle records, etc., more efficient and effective than was possible in the mid 1970's. These enhancements to the NCIC and state criminal record systems, plus the increased automation of the FBI Identification Division, have given police agencies quicker access to the

information and helped improve the quality of data being exchanged through the various systems. Except for certain new NCIC files, this is the same information that was available in 1975.

In the last decade, the focus has been on what constitutes "other institutions" within the meaning of Title 28, United States Code, Section 534. "Other institutions" have been interpreted to mean governmental entities. Based on this interpretation, nongovernmental authorities, i.e., private entities, have been denied access to criminal history information. The question as to whether such nongovernmental entities should continue to have access to other crime records in the NCIC is currently being reviewed. The bill will lay that issue to rest as far as private campus police and railroad police are concerned.

QUESTION 3:

What concerns, if any, do you have about the scope of this legislation? Do you feel there is any substantial possibility that college or university police may misuse the bill's provisions in ways which infringe on the constitutional rights of students?

ANSWER:

The bill removes all doubt about whether Federal law permits private railroad and university police to have access to criminal history and crime records maintained and exchanged by the FBI pursuant to Title 28, United States Code, Section 534. The bill would therefore allow these private entities access to NCIC files, Identification Division criminal history records, and the Interstate Identification Index (III). As you know, the III is managed jointly by Federal, state and local criminal justice entities. The Index, which is maintained in the NCIC computer, points the inquiring agency to the criminal history record maintained in the participating state. Seventeen states are currently responsible for the dissemination of their own records listed in the index; the FBI disseminates the records containing Federal arrests and arrests of the nonparticipating states. If the III becomes fully operational, all states may become responsible for the dissemination of their own records, and Federal arrest records would continue to be disseminated by the FBI. Although, some states may question whether they are bound to follow Federal legislation which attempts to control dissemination policies within their own state, we are confident that most participating agencies would be willing to comply with the Congressional intent of this legislation.

The possibility of misuse of criminal history information exists for any criminal justice agency with the authority to access such information. However, there are sanctions for such misuse and audit procedures to identify any misuse of the information disseminated by the NCIC.

RESPONSES OF THE FBI TO WRITTEN QUESTIONS FROM SENATOR MATHIAS

QUESTION I-A.

At the January 22, 1986 hearing on Senate Bill 1203, David Mitchell referred to an auditing program implemented by the FBI to review the manner in which NCIC information is used. Please give a brief history of the auditing program and explain

how the FBI conducts these audits. Please discuss the objectives of the auditing program.

ANSWER:

The NCIC operates on the concept of shared management between the FBI and criminal justice officials in each state. FBI NCIC provides mainframe computer service and dedicated telecommunications lines to each of the 50 states, Puerto Rico, and the Virgin Islands. Each state is responsible for management of the System within the state. As a result, the FBI NCIC Staff developed an audit program designed to audit the performance of each State Control Terminal Agency (CTA) in managing NCIC within the state. During the early months of 1983, an audit staff was formed and given training in auditing principles and methods. The staff became operational in August, 1983, with the audit of the State of Idaho. The staff consisted of one Supervisory Special Agent and 10 support employees. Since the Idaho audit, the staff has been increased to 20 full-time auditors. Twenty state audits have been completed with seven states scheduled for audit during February, March, and April, 1986.

The audit has two primary objectives. These are: 1. To ensure that the policies developed by each individual State CTA are in compliance with NCIC policy. Further, that users at the local level are aware of and in compliance with NCIC policy. 2. That the highest possible level of data quality is maintained in all NCIC Files.

In addition, there are a number of ancillary objectives, including: To raise the level of awareness concerning NCIC capability and responsibilities; to identify policies and procedures requiring change; to effect the most economical and efficient use of the System; to uncover any misuse of the System.

These objectives are realized through what is essentially a two-step auditing process. This process involves documentation and analysis of the procedures used by the CTA in

five major areas, and subsequent analysis of the efficacy of these procedures during a review of a sample of local users.

The five areas documented and assessed at the CTA are:

1. Access - An assessment of whether the CTA is properly supervising the admission and subsequent participation of agencies in NCIC. This involves an assessment of whether sufficient procedures have been established to ensure the criminal justice nature of each System participant. In addition, a review is conducted to determine whether each agency can adequately provide 24-hour-a-day service to answer inquiries concerning their entries in the System.

2. Dissemination of Information - An assessment of the CTA's performance in disseminating information required by each of the System users. In addition, documentation concerning state policies is reviewed in depth to determine whether state policy complies with NCIC policy.

3. Training - The training program of the state is reviewed to determine whether it provides users with the information necessary to properly use NCIC. Training in records management, quality assurance, and terminal operation is reviewed. Training programs for terminal operators, records management personnel, and sworn personnel are examined and commented upon.

4. Security - The physical and technical security of the System is examined to ensure that only authorized personnel can obtain information.

5. Quality Assurance - The performance of the CTA in meeting the responsibilities for record validation, hit confirmation, serious error messages, and other quality related issues is assessed.

Information developed during this CTA phase is then used to conduct the local agency review. This involves an examination of procedures actually used by selected agencies throughout the state. The actual process is as follows:

Approximately 90 days prior to the date of the audit, a listing of all participating agencies in the state and record totals for those agencies is drawn from the NCIC data base. Agencies are selected through a stratified sample designed to ensure that all major users in the state are reviewed. Depending upon the record distribution within the state, between 12 and 36 agencies are selected. The CTA is notified of the audit, provided with a copy of the audit checklist, a preaudit questionnaire, and the list of the local agencies selected. The CTA is requested to notify the local agencies of the purpose of the audit and to provide them with the approximate dates. Thirty days prior to the audit, the CTA must return the preaudit questionnaire and provide substantial documentation concerning operation of the state system.

Two weeks prior to the audit, the Audit Staff draws a random sample of records on file for each agency from the Wanted Person, Missing Person, and Vehicle Files. Depending upon the number of records on file within the state, the sample may range from 100 to 2,400 records distributed proportionately through the agencies selected. A complete listing of all Interstate Identification Index (III) inquiries and responses for a 30-day period is also obtained.

At the local agency, the NCIC Audit Staff interviews both command and staff level personnel concerning the agency's operations, policies, and related items. The Staff compares the NCIC entry with agency case files, warrants, and any other documentation available within the local agency. In addition, the Staff reviews actual warrants and contacts complainants to ensure the accuracy of information on file. At the end of each local agency review, the department is given a briefing to advise them of any policy violations and to ensure that any invalid or inaccurate records are removed from NCIC.

The on-site phase of the audits last approximately two weeks. At the end of the on-site phase, the Staff then begins

preparation of a written audit report that provides appropriate recommendations for corrective action by the State CTA.

In addition to the FBI NCIC audit program, each State CTA is required to establish, by December 31, 1986, a system to biennially audit every terminal agency within that state to ensure compliance with state and NCIC policy and regulations.

QUESTION I-A(1).

Does the Bureau regularly release audit reports summarizing the results of these audits?

ANSWER:

No; however, audit reports are available on request by Members of Congress, the press, or the public.

QUESTION I-A(2).

What does the Bureau do when it discovers inaccuracies or other quality problems in a contributing entities data system?

ANSWER:

The FBI NCIC audit program is essentially an assessment of the performance of the State CTA and is not designed to be an audit of a local police department or sheriff's office. The local agency review phase of the FBI Program is structured to provide an overall assessment of the state data base and not a complete audit of the local agency.

As part of this local review, however, quality problems are encountered. The Audit Staff pursues a multistep procedure to ensure that the record is either corrected or removed from the System. The initial step is to bring the error to the attention of the local agency. This usually results in immediate correction of the error. Should the agency be unwilling to make an immediate correction, a circumstance usually occurring due to some uncertainty about the information, the entry is brought to the attention of the State CTA for action. Finally, all records

not corrected while the Audit Staff is present are reviewed five days after completion of the audit. If the error has not been corrected, the entry is removed from NCIC by the FBI Quality Control Staff.

It is particularly important to note that a number of states have ongoing audit programs. These programs are similar to that operated by the FBI; however, they include an audit of the data quality at each of the local agencies participating in the state system.

QUESTION I-A(3).

Is there a threshold level of accuracy that the Bureau looks for during its audits? What does the Bureau do if it discovers that a contributing entity does not meet that threshold?

ANSWER:

As previously mentioned, the FBI NCIC audit program is designed to review the performance of the State CTA. As a result, the record sample is designed to provide an assessment of the level of data quality in the state as a whole. This means that the records reviewed during the local agency review rarely constitute a statistically valid analysis of the data in the agency. As a result, no threshold level of accuracy has been set. It is the position of the NCIC Staff and of the NCIC Advisory Policy Board that the desirable level of accuracy in all NCIC Files is 100%.

QUESTION I-A(4).

What does the Bureau do if it discovers that a contributing entity is entering a large amount of data incorrectly?

ANSWER:

During the last two years, the NCIC Audit Staff has conducted local agency reviews. The records of more than 350 agencies have been examined. Record-keeping procedures at two of these agencies were such that all entries on file were removed from the System. The removal of the records was accomplished by the State CTA after consultation with the NCIC Audit Staff.

QUESTION I-B.

Does Congress have to include any particular language in S.1203 to insure that the law enforcement entities covered by that legislation are subject to the auditing program?

ANSWER:

No. Current NCIC policy provides for the audit of all agencies accessing NCIC records by means of any particular state or Federal system. In addition, 28 CFR. 20 provides for states to audit agencies accessing criminal history records by means of any state system.

QUESTION I-B(1)

Is there any entity with access to the information in the NCIC computer that is not subject to the auditing program?

ANSWER:

No, all agencies at the Federal, state, and local level are subject to inclusion in the audit on a random basis. The more than 350 agencies reviewed to date have included units of the military, Federal law enforcement, state police, state departments of correction, local police and sheriff's offices, local prosecutors, and local courts.

QUESTION I-C.

Is the audit designed to discover unlawful uses of NCIC information?

ANSWER:

Yes. The NCIC audit program is designed to assess whether proper controls have been implemented within each state to limit potential illegal or improper use of NCIC information. Implementation of proper controls serves to reduce the risk of misuse by reducing the opportunity for unauthorized personnel to have access to the information, and by establishing audit trails to ensure that the perpetrator of any misuse can be identified.

QUESTION I-C(1).

What does the Bureau do to insure that no contributing entity uses the NCIC information unlawfully?

ANSWER:

Under the NCIC shared-management concept, the FBI and the managers of state and Federal systems accessing NCIC develop and implement numerous policy and procedural measures to ensure no unlawful use of information. Among these measures are:

1. An audit of Control Terminal Agencies (CTA) every two years by the FBI;
2. An audit of every agency accessing NCIC by the CTA, beginning in 1987; and
3. Mandatory logging of identity of person(s) inquiring upon a criminal history record.

QUESTION I-C(2).

Has an audit or any other system of review ever discovered unlawful uses of the NCIC information? If so, what did the Bureau do?

ANSWER:

Up to the present, the audits of CTAs have uncovered no unlawful uses of NCIC information. Other systems of review have revealed one case of misuse which eventually was prosecuted by a U.S. District Attorney for a violation of the Privacy Act of 1974.

QUESTION I-D.

Will the railroad and private university police referred to in S.1203 be expected to enter NCIC information into the NCIC network?

ANSWER:

All authorized users of the NCIC System are encouraged to make entries meeting entry criteria in all Files. The System, however, is voluntary, and no agency is mandated to make such use of the System.

QUESTION I-E.

Is every contributing entity held to the same standards of data quality and restrictions on use? Will the railroad and university police be held to those same standards?

ANSWER:

All users of the NCIC System, including railroad and campus police, should S.1203 become law, are required to maintain accurate, complete, and up-to-date records.

QUESTION II-A.

I placed into the hearing record a copy of a New York Times article published only three days before the hearing (copy attached). It discussed an incident in Boston where an individual was incarcerated overnight as a result of NCIC records that relayed incorrect information to law enforcement officials. I presume that the audits are designed to improve data quality so that these unacceptable incidents do not occur. What else has the Bureau done to improve data quality?

ANSWER:

A review of the New York Times article indicated that the Boston Police Department received a stolen vehicle report on

December 25, 1984. The Boston Police Department subsequently arrested a cousin of the registered owner in possession of the vehicle on July 9, 1985, as the report was still active. The article alleged that the family of the owner had reported it recovered but the report was not logged into the Police Department computer. The newspaper article further reports that the department did not follow the procedures mandated by the Federal Bureau of Investigation to assure the accuracy of the information in the computer. The article did not specify whether the owner personally went to the police station to report the car recovered or whether anyone was identified as the officer receiving the recovery report that would be responsible for canceling the outstanding stolen vehicle report.

In addition to the on-site NCIC audits conducted in each state every two years, NCIC has an ongoing Quality Assurance Program at FBIHQ. The goal of the FBI NCIC Quality Assurance Program is twofold:

1. To design on-line computer edits to prevent the entry of incorrect data.

2. To review records in the active on-line data base and identify and remove those records containing incorrect data.

Since the incident you referred to in Boston involved a stolen vehicle entry, let me give you a brief overview of the type of quality assurance conducted for the Vehicle File.

The NCIC Staff utilizes data furnished by the National Automobile Theft Bureau (NATB) concerning the unique vehicle identification number (VIN) format assigned to vehicles that identifies the manufacturer, the type of vehicle, the engine size, the model, and the assembly plant production number. The NCIC Vehicle File has computer edits designed to reject erroneous entries not conforming with these VIN standards for automobiles and trucks. The NCIC Staff conducts additional research with manufacturers of other types of vehicles, such as construction equipment and farm equipment, to ascertain their product

identification numbering standards. The NCIC Staff, upon receiving the results of this research, manually reviews prior records entered into NCIC to detect possible errors. Erroneous records are canceled when serious errors are detected and the entering agency advised.

NCIC defines a serious error as any incorrect data (i.e., an incorrect VIN or license plate number) that would result in an erroneous "hit" or matching record being furnished to an agency following an inquiry. Records containing serious errors are immediately removed from the system by NCIC Staff. At the time the record is removed (by cancellation message including an explanation of the error), the entering agency responsible for the record is notified of NCIC's action.

NCIC designed and hosted a Quality Assurance Training Seminar during 1984 and 1985. Seminar attendees consisted of two representatives from each State Control Terminal Agency (CTA). The seminar provided the attendees with the necessary tools and skills to establish a quality control program within each state. Additionally, NCIC quality assurance research data is provided to each CTA for incorporation into their state quality control programs.

QUESTION II-B.

The article states that officials in the Boston Police Department admitted that the Department does not follow the checking procedures mandated by the FBI to assure the accuracy of the information in the computer. Please describe the action the Bureau has taken in response to this admission?

ANSWER:

The NCIC Operating Manual specifies the procedures required for user agencies to periodically validate active records. The NCIC Staff forwards each State Control Terminal Agency (CTA) a listing of active records to be validated, and the CTA disseminates the records to the local originating agency.

The records being validated are chosen by date of entry into NCIC. The current validation procedure selects records that have been entered for 60 days and annually thereafter. NCIC policy has established in the CTA a "unification of responsibility for system user discipline and adherence to system procedures and policies within each state. The CTA also serves as a central point in its state for handling record validations, quality control matters, dissemination of manuals and other NCIC publications, security matters, user training, audit, and any other problems concerning system use that may arise." Consistent with this shared-management concept, the Massachusetts NCIC State CTA was immediately contacted to request a timely and thorough review regarding allegations contained in the "New York Times" article. The Control Terminal Officer was instructed that should there be evidence of substantial problems in the way records have been validated by the Boston Police Department indicating that a substantial data quality problem exists, that immediate action should be taken to ensure validation policy is followed. He was further advised that if numerous false reports are contained in the NCIC System, that all records should be removed from the system until such time as the CTA is assured the records are accurate and up to date. Contact has been maintained with the State CTA and, on a limited basis, with the Boston Police Department since the publication of the article. The State CTA has advised the FBI that the Boston Police Department is complying with State NCIC validation procedures and that a review of their procedures will be conducted by him. The Boston Police Department will not comment on this matter while it is in litigation.

QUESTION II-B(1).

What is the Bureau doing to insure that other entities included in the NCIC network do not falsely certify the accuracy of their records?

ANSWER:

The NCIC System operates on the basis of shared management responsibility with a Control Terminal Agency and a Control Terminal Officer in each state. NCIC has regularly scheduled meetings with these officials who attend one of four regional working group meetings to discuss operational aspects of NCIC as well as provide recommendations through the NCIC Advisory Policy Board which meets every six months. The NCIC Section has a User Agreement covering the responsibilities of the CTA in each state to meet national policies detailed in several documents related to the NCIC System. The biennial audits of the state agency conducted by the NCIC Staff will determine their compliance with NCIC System procedures. The User Agreement includes sanctions designed to implement proactive quality assurance measures. The sanctions include sending a letter of request for compliance and the potential for terminating access to NCIC if deficiencies are not corrected. In addition to the biennial audits, NCIC furnishes monthly statistics to each state on the number of rejected transactions and a quarterly analysis of types of messages rejected. These are designed to identify the agency in the individual state that may need supplemental training.

QUESTION II-C.

The New York Times article states that the individual arrested in Boston has filed a suit in the federal district court charging the police with violating his constitutional rights against illegal arrest and imprisonment. Has the FBI ever been sued because it maintained the NCIC network that contained incorrect information that led to a false arrest similar to the one

discussed in the New York Times article? If so, please explain the nature and results of those suits.

ANSWER:

According to the best information available, since the inception of NCIC in 1967 and to the current time, only one suit has been filed against the FBI that has not been dismissed in its early stages. The suit resulted from a complaint by an individual whose identification had been stolen by an unknown individual. The unknown individual was subsequently arrested, failed to appear for trial, and was placed in a fugitive status based on the name on the stolen identification. The complainant alleged false arrest and imprisonment. This case is still pending.

QUESTION II-C(1).

What is the FBI's liability in a case similar to the one that occurred in Boston?

ANSWER:

The FBI holds the position that it is not subject to civil liability arising out of an incident with a factual basis similar to the situation that occurred in Boston, Massachusetts. Unless the FBI is properly made aware of erroneous entries by a contributing agency, it is under no duty to an individual to assure the accuracy of information transmitted by local authorities into the computer system of the National Crime Information Center (NCIC). See Pruett v. Levi, 622 F.2d 256 (1980). Liability on the part of the FBI would also likely be barred by the discretionary function exception to the Federal Tort Claims Act (FTCA) which excludes any claim "based on the exercise or performance or failure to exercise or perform a discretionary function or duty...." Title 28, United States Code (U.S.C.), Section 2680(a). The decision by the FBI to permit local law enforcement agencies to contribute information to the NCIC computer system without independent verification of its accuracy is clearly a discretionary determination as to the manner of performing the FBI's statutory function under Title 28,

U.S.C., Section 534. See, United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines), 104 S.Ct. 2755 (1984).

However, the FBI is fully aware of its responsibilities as manager of the NCIC system and has established standards of reasonable care for entry, maintenance, and removal of records in the System. In addition, the quality control measures employed, audit program, and the validation program seek to eliminate the type of error which would give rise to a case similar to that in Boston.

QUESTION II-D.

The New York Times article states that suits similar to the one now pending in Boston have been brought in Michigan, California, and Louisiana. What is a local police department's liability under 42 USC 1983 or other federal law in a case similar to the one that occurred in Boston?

ANSWER:

To establish the liability of a local police department under Title 42, U.S.C., Section 1983, it is necessary to prove that the alleged unconstitutional action resulted from a policy or custom of the police department or that policy-making officials in the police department were directly involved in the action. In a situation similar to the one in Boston, it is possible that a local police department could be found liable under Title 42, U.S.C., Section 1983 if it failed to establish and maintain reasonable administrative mechanisms designed to minimize the possibility of such a situation occurring. See, Testa v. Winquist, 451 F. Supp. 388 (D.R.I. 1978).

[New York Times
January 19, 1986]

Computer Data Faulted in Suit Over Wrongful Arrest

By DAVID BURNHAM
Special to The New York Times

BOSTON, Jan. 15 — Late one evening last summer a Boston graduate student was arrested at gunpoint and held in jail overnight. A week later he was found not guilty of a crime that never occurred.

The No. 2 official in the Boston Police Department has since acknowledged in a deposition that the department computer that provided the information leading to the arrest contained "quite a few" similarly false reports.

In addition, another senior police official has admitted that the department does not follow the checking procedures mandated by the Federal Bureau of Investigation to assure the accuracy of the information in the computer. His admission, also in a deposition, came after he officially certified to the bureau that such checks were made.

Thousands of Entries Daily

The case began July 9 when John R. Kelly, a Boston police officer, arrested Suke Omere Emma on charges of stealing a family member's car. The car had never been stolen, however, and Mr. Emma was found not guilty. He filed a suit in Federal District Court charging the Police Department with violating his constitutional rights against illegal arrest and imprisonment, saying the department "knowingly and systematically" maintained inaccurate information in its computer.

Armed with the sworn statements of department officials and a critical analysis Boston police procedures by a criminal history expert from New York, Mr. Emma's lawyer, Jeffrey W. Kobrick, asked the court Wednesday to rule that the case be considered an action on behalf of all citizens who might be effected. If this petition is granted by Federal District Judge William A. Young, a victory by Mr. Emma could mean changes in the department's procedures for processing its computer data. Judge Young set a hearing for Jan 22.

Mr. Kobrick said Wednesday that he knew of another similar case. On Nov. 14, 1985, Mr. Kobrick said, Mark L. Juliano was arrested in Boston on the basis of a false stolen car report, held in jail and then found not guilty.

Because much of the information collected by individual police departments like Boston's flows into the National Crime Information Center, a national network maintained by the F.B.I., accuracy problems in one department can plague law-enforcement officials and citizens around the country.

Suits in Other States

Although similar suits have been brought in Michigan, California and Louisiana, Mr. Emma's challenge is of special interest because of the admission by senior police officials that a significant number of false reports are in the department's computer and that the department has not followed procedures to correct them.

Superintendent-in-Chief John A. Gifford, second in command of the Boston Police Department, said in a recent deposition that the department computer was "still carrying quite a few vehicles as stolen that are not in fact stolen."

Lieut. Paul T. Conway, commanding officer of the department's operations division and the supervisor of the department's computer operations, said in his deposition that the department did not follow the F.B.I.'s regulations requiring periodic checks that "all records remaining in the system are valid and accurate."

Nevertheless, Lieutenant Conway said he had signed letters to the bureau certifying that the record had been reviewed and all those no longer were current had been removed. He said that because of a shortage of personnel only a sampling of records were checked for accuracy.

New York Expert Testifies

Mr. Kobrick also presented a deposition from Adam F. D'Alessandro, a retired computer expert from the New York City Police Department. Mr. D'Alessandro said the statements from the Boston Police Department showed its processing of stolen car reports was "haphazard and highly conducive to serious error."

Michael Bolden, an attorney for the department, said Wednesday that he would have no comment on the case.

Mr. Emma, a 32-year-old graduate student at Northeastern University, was arrested shortly before midnight on July 10 as he was parking the family car in front of his apartment in the Dorchester section. The police handcuffed him, took him to a local stationhouse and charged him with stealing that car, which belonged to Mr. Emma's cousin, Imeutinyan Omere. Although Mr. Emma said that he tried to persuade the officer that the car was not stolen, that he was a close family member of the registered owner of the car, and that his cousin was asleep in the apartment they shared and would verify his story, the police would not listen, he said.

According to police documents, on Dec. 25, 1984, another member of the Emma family parked the car in an unusual location. Not being able to find the car, the family went to the local police station and reported it stolen. Several hours later the car was found and the family reported it recovered. The second report, however, was not logged into the Police Department computer. It was this false notice that the gray 1980 Ford was still missing that six months later led to Mr. Emma's arrest.

QUESTION II-E.

If S. 1203 becomes law and a railroad or university police officer makes a false arrest under circumstances similar to those that occurred in Boston, would he be operating under the color of state law? Would he be susceptible to a suit under the Federal Tort Claims Act or 42 USC 1983?

ANSWER:

If a railroad or university police officer has been granted the authority under state statute to investigate and enforce the criminal laws of that state, then the officer would be operating under color of state law if he made an arrest under circumstances similar to those that occurred in Boston. A railroad or university police officer performing duties under the color of state law could be sued under Title 42, U.S.C., Section 1983 for an alleged constitutional violation. Such a suit could not be maintained against a railroad or university police officer under the FTCA since actions under the FTCA are restricted to suits alleging negligent or wrongful acts or omissions of employees of the Federal Government.

QUESTION II-E(1).

What remedies would be available to an individual falsely arrested by one of these quasi-police authorities on the basis of data in the NCIC network?

ANSWER:

An individual could file a civil action under Title 42, U.S.C., Section 1983 against the police department or individual officer alleging a violation of the Fourth Amendment prohibition against unlawful searches and seizures. An individual could likewise file a civil action alleging the common law torts of false arrest and/or false imprisonment.

QUESTION II-F.

Would S. 1203 permit any police department whose official actions are <u>not</u> taken "under color of state law" for

purposes of 42 USC 1983 to have access to criminal history or other NCIC records? If so, would persons aggrieved by any unlawful actions taken by these agencies in reliance on NCIC records have any redress against the police department under Federal law?

ANSWER:

It appears from the language of S. 1203 that only railroad and private college or university police departments that are operating under color of state law for purposes of Title 42, U.S.C., Section 1983 would have access to NCIC records.

QUESTION III-A.

While access to the national system or criminal history records generally has been limited to law enforcement agencies accountable to the public, Congress is often asked to make exceptions. We have been asked to make exceptions for government security investigations, for securities dealers, for operators of nuclear power plants, and, now, for certain quasi-public police forces and railway police. What basic qualifications must an entity demonstrate before it is entrusted with access to NCIC information? What traits do each of the entities with access to NCIC information have in common? Is there a general rule that should be applied?

ANSWER:

Before responding to this question, it is important to clarify that there are two FBI systems which S. 1203 is addressing; i.e. the Identification Division Records System (IDRS) and the National Crime Information Center (NCIC).

The IDRS contains criminal history records on over 23 million individuals. Each arrest on these records is supported by an arrest fingerprint card. The FBI exchanges Identification Division (ID) criminal history records for criminal justice purposes and for licensing and employment purposes. Federal, state and local authorities are allowed access to ID records

pursuant to 28 U.S.C. 534 and Public Law 92-544 in order to determine suitability for licensing and employment. In addition, certain private institutions have also been allowed access to these criminal history records for licensing and employment purposes, e.g. banks (see P.L. 92-544), securities industry entities (15 U.S.C. 78q) and commodities industry entities (7 U.S.C. 12a). Further the Congress is now considering allowing operators of nuclear power plants to access criminal history records in order to determine employment suitability (see S. 274). Access to ID records for any of these licensing and employment purposes can only be accomplished through the submission of applicant fingerprint cards to the FBI Identification Division. These entities do not enter records into the IDRS; they merely check with the IDRS before an individual is licensed or hired.

The NCIC is a system made up of various files, e.g. wanted persons file, missing person file, stolen vehicles file, stolen securities file, etc. In addition, the NCIC includes the Interstate Identification Index (III). This Index contains the name, FBI number and other identifiers of 10 million of the 23 million criminal history records in the IDRS. The III allows criminal justice agencies to immediately retrieve a criminal history record based on a name and other identifiers. The III is currently only accessed by criminal justice agencies for criminal justice purposes. The III is not accessible for licensing or employment purposes by the banks, entities within the securities industries, etc.

The intent of S. 1203 is different from those efforts which intend to allow various entities access to only criminal history information for licensing and employment purposes. S. 1203 intends to ensure private railroad and private university police can enter information into and retrieve information from the NCIC and to the IDRS. The purposes of their access is to enable these specified private entities to effectively undertake their criminal justice responsibilities.

Pursuant to 28 U.S.C. 534, two basic qualifications must be met to allow entities to enter information into and retrieve information from the NCIC and the IDRS; 1) they must have criminal justice responsibilities and 2) they must be governmental entities. (As mentioned previously, there are other laws which govern access to the IDRS for noncriminal justice purposes.) State law has given various private railroad and university police law enforcement responsibilities. But the states did not incorporate these police authorities into a state governmental entity. Not being a governmental entity their authority to enter and retrieve criminal history records has been denied; their authority to enter and retrieve information from NCIC hot files is being reviewed.

Congress is being asked to overcome the "governmental" obstacle in the law which is precluding these private law enforcement entities from gaining access to those FBI records maintained pursuant to 28 U.S.C. 534.

QUESTION III-A(1).

Has the FBI drafted guidelines clearly delineating what qualifications an entity must demonstrate before it is entrusted with access to NCIC information? Is the FBI planning to draft such guidelines?

ANSWER:

Title 28, Code of Federal Regulations (CFR), Part 20 sets forth guidelines for disseminating criminal history information. The NCIC also has established policy controling access to NCIC.

The NCIC System became operational in 1967 as a service to all criminal justice agencies. General policy concerning the philosophy, concept, and operational principles of the system is based upon the recommendations of the NCIC Advisory Policy Board to the Director of the FBI. The criteria that the FBI NCIC uses for determining that an agency qualifies for access is that it meets the definition of a criminal justice agency as contained in the Department of Justice Regulations on Criminal Justice

Information Systems (28 CFR 20 Subpart A). This section requires that the agency must be a governmental agency which allocates a substantial part of its annual budget to the administration of criminal justice ('allocates a substantial part' has been interpreted to mean more than 50% by the originator of the Regulations). The criminal justice agencies who are current users of the NCIC System are properly concerned over the potential for improper use of their data.

QUESTION III-A(2).

Will the FBI be in a better position to draft such guidelines after it completes its two year study?

ANSWER:

As previously indicated, guidelines and policy already exist regarding access to and exchange of criminal history information and information in other NCIC files.

The purpose of this NCIC 2000 study is to identify the future needs of NCIC users in order to enable the FBI to develop a system to respond to such needs. The effect of this study on existing guidelines or policy cannot be determined until the study is completed.

QUESTION III-A(3).

Should the Congress wait until the FBI completes its two year study of NCIC network before making any more exceptions to the rule on access by non-criminal justice agencies? If not, why not?

ANSWER:

The NCIC is now available to criminal justice agencies. The NCIC 2000 study will insure that the NCIC of the future meets the needs of criminal justice agencies. The bill's purpose is to ensure certain private criminal justice authorities are allowed the access to NCIC and the Identification Division Records System which they need to effectively undertake their responsibilities. The effect of these entities access or lack of access to the NCIC

and Identification Division will have no effect on the NCIC study. The completion of the study should not be a factor in considering the problems addressed in S. 1203.

QUESTION III-B.

What is the difference between airport police and Amtrak police for purposes of this legislation? Why does this bill not grant airport police the same privileges that it is prepared to give railroad and university police?

ANSWER:

Most, if not all, airports in the country are Federal, state, or municipally owned and operated entities. Therefore, police agencies at those locations would be governmental as well as criminal justice entities. As such they would be able to access NCIC and Identification Division records.

If the situation exists where airport police have been given law enforcement responsibilities but are not a part of the state or local government structure, then any problems they may have in effectively undertaking their responsibilities should be brought to the attention of the Congress in an effort to obtain the appropriate redress.

QUESTION III-C.

Are there other private institutions besides universities whose security forces should, in your judgment, have access to this data?

ANSWER:

The FBI has not identified other private law enforcement entities which seek access to the NCIC or the Identification Division Records Systems.

QUESTION IV-A.

Many people have voiced the concern that this type of legislation opens NCIC up to private access. How can we be

certain that these quasi-public police are accountable to the public, rather than to their private employers?

ANSWER:

Current NCIC policy which was deliberated and recommended by the Advisory Policy Board requires that nongovernmental agencies such as railroad and private campus police must have full police powers pursuant to a state law and must have complied with minimum police training standards. Thus, to have direct access to NCIC information, they must meet these standards and they must agree to abide by all regulations and policy regarding NCIC information and services.

QUESTION IV-A(1).

How can we be certain that the entities covered by this legislation will have the same standards as state law enforcement entities?

ANSWER:

The private railroad and university police <u>are</u> law enforcement entities established by the states. The difference between these and other state law enforcement entities is that they are not governmental. However, the standards which they are held to are established by the state.

If these private entities gain the requested entry and access capability to NCIC and Identification Division records, they will be held to the same standards as others who use these systems. If the information is misused, etc. appropriate sanctions are available.

QUESTION IV-A(2).

How can we be certain that the entities covered by this legislation will only use the NCIC information in a lawful manner?

ANSWER:

Agencies accessing information from NCIC would be subject to the discipline inherent in the System. The same active and passive measures currently in existence would subject those agencies to periodic audits, to other quality control measures, and to sanctions.

QUESTION IV-B.

What types of entities fall within the definition of "railroad police departments" or "police departments of private colleges or universities" as those terms are used in the bill? Can a railroad or private university subcontract a "police department" from a private company such as Wells Fargo or Pinkerton?

ANSWER:

According to S. 1203, the authority to exchange/access NCIC and Identification Division Records would be extended to private railroad and private university police if such entities perform the administration of criminal justice pursuant to state statute and they allocate the substantial part of their annual budget to the administration of criminal justice. If S. 1203 becomes law, the FBI will review those entities seeking access pursuant to the law to ensure that they have full police powers including the power of arrest and meet minimum training standards.

As to subcontracting, it would appear that such companies with no statutory law enforcement functions would not be authorized to exchange records with NCIC or Identification Division .

QUESTION IV-B(1).

What percentage of the railroads or private universities do you believe will subcontract "police departments"?

ANSWER:

The associations representing these entities would be in the best position to respond as to this question.

QUESTION IV-B(2).

If a railroad or private university subcontracts a "police department" from a private company, will that "police department" have access to the NCIC network?

ANSWER:

As indicated above, such subcontracting would not qualify an agency to access NCIC information.

QUESTION IV-B(3).

If a railroad or private university subcontracts a "police department" from a private company and that private company also offers security services to entities other than qualifying railroads or universities, how can we be certain that the NCIC information will not be shared unlawfully within the operation of the subcontractor?

ANSWER:

As previously indicated, unless otherwise provided by law these private subcontractors would not be authorized to exchange records with NCIC or Identification Division Records. Should they qualify under a new statute, they still would not be permitted to obtain or disseminate information beyond the original purpose for which it was obtained.

QUESTION IV-C.

Are there states that prohibit these types of quasi-police departments from gaining access to that state's criminal history records? If so, would this legislation enable certain railroad and private university police departments to circumvent the letter or spirit of the state law?

ANSWER:

The FBI is aware of no state law which prohibits those law enforcement entities addressed by S. 1203 from exchanging criminal history records and/or NCIC information. However, if states wish to restrict such entities, the state enabling statute for these entities can reflect such an intent and this would effectively keep them from exchanging/accessing records stored in NCIC or the Identification Division.

QUESTION V-A.

Attached to Raymond Ingalls' written testimony concerning S.1203 is an August 24, 1982 letter to Norman Darwick, Executive Director of the International Association of Chiefs of Police, Inc., from FBI Director William H. Webster. That letter refers to a legal interpretation from the Justice Department's Office of Legal Counsel concerning Menard v. Mitchell and its impact on 28 U.S.C. 534. Please provide a copy of that legal opinion.

DEPARTMENT OF JUSTICE
MEMORANDUM TO FILES

FROM: Mary C. Lawton
ORGANIZATION:
OFFICE: Legal Counsel
PHONE: 739-2059

REGARDING: Railroad Police Access to FBI Criminal Identification Records
DATE: June 22, 1978

STATEMENT:

This memorandum addresses the problem of whether private railroad police may have access to FBI criminal identification records either directly or through state law enforcement agencies. The records in question are the NCIC/CCH files and the manually compiled rap sheets. It is assumed that the railroad police in question have the power to carry firearms, arrest, and perform other police functions under state law.

1. Statute and Regulations

These records are maintained and disseminated under 28 U.S.C. § 534, which provides:

(a) The Attorney General shall--

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records; and

(2) exchange these records with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

(b) The exchange of records authorized by subsection (a)(2) of this section is subject to cancellation if dissemination is made outside the receiving departments or related agencies.

(c) The Attorney General may appoint officials to perform the functions authorized by this section.

This authority has been delegated to the Director, FBI by 28 CFR § 0.85(b), which provides in pertinent part:

§ 0.85 General functions.

Subject to the general supervision of the Attorney General and under the direction of the Deputy Attorney General, the Director of the Federal Bureau of Investigation shall:

* * *

(b) Conduct the acquisition, collection, exchange, classification, and preservation of identification records, including personal fingerprints voluntarily submitted, on a mutually beneficial basis, from law enforcement and other governmental agencies, national banks, member banks of the Federal Reserve System, FDIC-Reserve-Insured Banks, and banking institutions insured by the Federal Savings and Loan Insurance Corporation; . . . 1/

The Director's authority is limited by the subsequently promulgated 28 CFR, Part 20, "Criminal Justice Information Systems." This provides that criminal history information in automated or manual Department of Justice record systems can be disseminated "to criminal justice agencies for criminal justice purposes." 28 CFR § 20.33(a)(1). The FBI may cancel further exchanges if "dissemination is made outside the receiving department or related agencies." 28 CFR § 20.33(b). Finally, a "criminal justice agency" is defined as "a government agency or any subunit thereof which performs the administration of criminal justice." 28 CFR § 20.3(c)(2).

2. Direct Access

Thus, 28 CFR §§ 0.85(b), 20.33(a)(1) permits the FBI to disseminate criminal history information directly only to government agencies. This would exclude railroad police and other private police forces or guard services.

1/ This section formerly included "railroad police" as agencies authorized to exchange identification records with the FBI. They were deleted by Atty.Gen. Order 770-78, 43 F.R. 8137 (Mar. 2, 1978).

The regulations are derived from 28 U.S.C. § 534(a), which directs the Attorney General to exchange identification records, for official use, with officials of "the Federal Government, the States, cities, and penal and other institutions." The Rock Island Line has argued that "other" institutions include railroad police. However, the term appears at the end of a series of public entities. By the principle of ejusdem generis, it would be read to mean "other public institutions," such as mental hospitals, bail agencies, and the like. See, e.g., Cleveland v. United States, 329 U.S. 14 (1946); United States v. Stever, 222 U.S. 167 (1911). See generally 2A Sutherland, Statutory Construction §§ 47.17-18 (4th Ed.). This is consistent with the legislative history of the section. Exchange of criminal identification information was first authorized in the Department of Justice Appropriation Act for 1925. 2/ The then Director of the FBI explained that the appropriation would be used to take over the identification files maintained by the National Association of Chiefs of Police and to exchange information with police departments. 3/ Nothing was said about exchanges with private organizations. Similarly, when the appropriation provision was converted to a permanent statute, the only legislative discussion was of exchange with other public law enforcement agencies. 4/ It therefore appears that Congress understood what is now 28 U.S.C. § 534(a)(2) to authorize the exchange of information with public agencies only. 5/ See Menard v. Mitchell, 328 F.Supp. 718, 726-27 (D.D.C. 1971).

3. Indirect Access

The next question is whether a local criminal justice agency may provide railroad police with criminal history information it has requested from the FBI. It is assumed that this information would be used by the railroad police only for "criminal justice purposes," i.e., detection and apprehension of offenders, as required by 28 CFR § 20.33(a)(1). 6/ Section 20.33(b) states that "the exchange of criminal history record information . . . is subject to cancellation if dissemination is made outside the receiving departments or related agencies." Unless a railroad police force is a "related agency," then, the FBI can prohibit a local law enforcement agency from passing criminal history information to it.

2/ Act of May 28, 1924, ch. 204, Title II, 43 Stat. 217.

3/ Hearings by a Subcommittee of the House Committee on Appropriations in charge of the Department of Justice Appropriation Bill, 68th Cong., 1st Sess., at 99, 107-08 (1925).

4/ Act of June 11, 1930, ch. 455, 46 Stat. 554; see 72 Cong. Rec. 1989 (1930).

5/ We note that a private organization, such as the VERA Foundation, can be considered a de facto public agency when it is the only agency, public or private, performing a criminal justice function under public auspices. This is not the case when a private organization has concurrent criminal justice functions with public agencies.

6/ "Criminal justice purposes" is defined to include detection and apprehension of offenders. 28 CFR § 20.3(d).

Section 20.33(b) implements the almost identical language of 28 U.S.C. § 534(b). 7/ Section 534(b) was added to the statute in 1957. 8/ Its only legislative history is the testimony of J. Edgar Hoover before the House Appropriations subcommittee. Mr. Hoover stated that he had learned of several instances where local police departments had requested FBI criminal history records and had used them in political campaigns or labor disputes. He continued:

> I feel these records should be kept inviolate and should not be used for political or private gain of any kind. Certainly, when the time comes when any private individual or agency can obtain the fingerprint identification records of the FBI on any individual, irreparable harm will result.

He then, at the subcommittee's request, advanced the language of the present § 534(b) as the way to meet this problem. 9/

Read narrowly, Mr. Hoover's statement shows an intent only to prevent redissemination for purposes unrelated to criminal justice administration. On this theory, a private law enforcement organization which used the information only for law enforcement purposes could be considered a "related agency."

I think, though, that the broader reading is more correct. As pointed out by the district court in Menard v. Mitchell, 328 F.Supp. 718, 726-27 (D.D.C. 1971), dissemination of arrest records can raise substantial privacy questions, and the underlying statute should therefore be construed to restrict dissemination to clearly authorized purposes. One of the dangers of abuse pointed out in Menard is that the FBI has no direct control over the use of arrest information that is redisseminated by local law enforcement agencies. Id. at 727. This remains true. The only sanction for abuse of criminal history information is cancellation of the recipient's authority to obtain it. This falls only upon the local law enforcement agency; it has no direct effect on a third party to whom the information has been given. Any sanction for abuse would depend on the relationship between the local agency and the third party. Since only direct recipients of criminal history information are subject to FBI control, the Bureau loses the power to prevent its abuse once the information is redisseminated to private persons. Therefore, the remedial purpose of § 534(b) is best served, and the dangers alluded to in Menard best avoided, if "related agencies" are understood to be those which could have a direct relationship with the FBI under § 534(a)(2). This interpretation would permit exchange of criminal history information among criminal justice agencies while preserving FBI control over its use.

7/ See p. 1, supra.

8/ Department of Justice Appropriation Act, 1958, 71 Stat. 61.

9/ Hearings Before the Subcommittee of the Committee on Appropriations of the House of Representatives in Charge of the Departments of State and Justice Appropriation Bill, 85th Cong., 1st Sess. at 223 (1957).

The CHAIRMAN. Now, on panel two, I will ask these witnesses to come around, and these witnesses represent the railroad, private university and college police: Mr. Charles E. Lamb III, president of the International Association of Campus Law Enforcement Administrators, and who is incidentally the director of public safety at Georgetown University, is that correct?

Mr. LAMB. Yes, Senator.

The CHAIRMAN. Mr. Carl B. Stokes, system vice president, division of law enforcement and safety, University of South Carolina. Incidentally, when I was Governor of the State, I appointed his father, I believe, as sheriff of Darlington County where there was a vacancy.

Mr. STOKES. That is correct, sir.

The CHAIRMAN. He made a good sheriff, and we are very glad to have you here.

Mr. Jerrold L. Witsil, director of public safety at Princeton University, if you will come around and have a seat.

Mr. Raymond C. Ingalls, chief of police for Amtrak. Mr. Ingalls has been promoted through the ranks of Amtrak from chief investigator for the Southern region in 1974 to his current position as chief of police for Amtrak.

We are very pleased to have you gentlemen here. Now, do you have a spokesman for the group or do you have separate statements?

Mr. LAMB. Senator, I am the spokesman and the president of the International Association——

The CHAIRMAN. Speak in your microphone now so we can hear you.

Mr. LAMB. I am the president of the International Association of Campus Law Enforcement Administrators.

The CHAIRMAN. Yes.

Mr. LAMB. My colleagues, as already indicated, are from Princeton University——

The CHAIRMAN. Would you care to proceed now? Are you speaking for the entire group?

Mr. LAMB. Yes, sir, and we did expect that there may be some additional comments by——

The CHAIRMAN. You are speaking only for the association of campus law enforcement administrators?

Mr. LAMB. Yes, sir.

The CHAIRMAN. I see. All right, you may proceed.

STATEMENT OF A PANEL CONSISTING OF CHARLES LAMB III, PRESIDENT, INTERNATIONAL ASSOCIATION OF CAMPUS LAW ENFORCEMENT ADMINISTRATORS; CARL B. STOKES, SYSTEM VICE PRESIDENT, DIVISION OF LAW ENFORCEMENT AND SAFETY, UNIVERSITY OF SOUTH CAROLINA; JERROLD L. WITSIL, DIRECTOR OF PUBLIC SAFETY, PRINCETON UNIVERSITY; AND RAYMOND C. INGALLS, CHIEF OF POLICE, NATIONAL RAILROAD PASSENGER CORP.

Mr. LAMB. I would like to introduce two other chiefs that are present here today. Behind me is Mr. James McGrory, just recently retired chief of police at the University of Delaware.

The CHAIRMAN. We are glad to have you with us.

Mr. MCGRORY. Thank you.

Mr. LAMB. And Mr. William Caffey, chief of police at Southern Methodist University in Dallas, TX.

The CHAIRMAN. Good.

Mr. LAMB. If I may, I would like to proceed with a short synopsis of our remarks.

The CHAIRMAN. All right, sir.

Mr. LAMB. We represent over 1,000 police chiefs and directors of public safety at campuses of higher education in the United States. These chiefs and directors represent over 30,000 commissioned police officers who are in need of relief which is offered by S. 1203, and we are most hopeful that we will get passage of said bill.

Our association represents, in addition to private college and campus university police departments, State, county, and municipal college PD's. It is important to point out at the onset that police departments of State, county, and municipal institutions of higher learning have legal rights of access to FBI/NCIC.

This bill is designed to provide equal opportunity to private college and university police departments meeting specific criteria identical to those employed by county, municipal, and State police departments in each and every State.

Over 10 years ago, an audit was conducted by the FBI/NCIC which resulted in the revocation of all private college and university originating agency identifier numbers, the ORI's. Our attorney general's office which had issued the definition of "criminal justice agency" declined at that time to issue a reinterpretation of "criminal justice agency," which we feel is appropriate at this time based upon the following information.

The Omnibus Crime Control and Safe Streets Act of 1968, as amended, provides that all law enforcement agencies are to be improved at all levels of government and that crime must be dealt with by State and local government.

It is further indicated that private security activities differ from public agencies in regard to both funding and public authority in that it is possible that private security activities may be federally funded when particular circumstances indicate that there will be an unusually great benefit accruing to public criminal justice.

The act further pointed out that a special relationship might exist between Federal programs such as LEAA and general law enforcement, and where such activities are related to government and not private purposes.

The apprehension, detention, investigation, and ultimate prosecution of criminal activities on private college and university campuses is just such an activity. It is erroneous to believe that crimes committed on local- and State-supported campuses are any different than crimes committed on private college and university campuses.

The definition of a "criminal justice agency" presently in use is "(1) a court, (2) a governmental agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order which allocates a substantial part of its annual budget to the administration of criminal justice."

It therefore may be important to redefine "criminal justice agencies," as many States have already done, to include private campus police departments who are performing a service for the public.

Specifically, section 51:212 of the Texas Educational Code applies to all university police officers in Texas and specifies their qualifications, training, liabilities, and authority which are identical to other police officers in the State.

The officers in police departments at SMU, Rice, Baylor, and Texas Christian University are commissioned under this authority. There are other States which have similar legislation, but despite this action, these colleges and universities still do not have access.

In June 1981, the NCIC Advisory Policy Board accepted a report from Col. Gerald Hough, superintendent of the Michigan State Police, advocating allowing private college and university police departments, railroad police departments, and central communication units to have access to all of NCIC information except CCH, computerized criminal history.

That particular committee report provided 11 specific criteria to be met by any department, be it railroad, private college and university, or central communication centers, in order to qualify for an ORI number with a suffix. Our association advocates a review of that criteria and the inclusion of that criteria as a constant for departments applying for an ORI number, which will allow for specific additional opportunity to access CCH.

In 1982, the International Association of Chiefs of Police supported the efforts of IACLEA and the railroad police. Likewise, the Director of the FBI, the Honorable Judge William Webster, stated he considered it anomalous that a legal prohibition exists between private college and university police departments and public college and university police departments.

This association, and particularly myself as its president, recognizes and respects the need to maintain the privacy, security, and integrity of the information contained within NCIC.

This request would not open the CCH files to all groups or institutions that employ any form of security officer, but rather is limited to police departments who perform the administration of criminal justice pursuant to a State statute which allocates a substantial part of their annual budget to the administration of criminal justice.

[Responses to written questions follow:]

Responses of Charles E. Lamb, III to Written Questions From Senator Thurmond

(1) What reaction do you anticipate the local police jurisdictions will have if this legislation becomes law?

Answer: The International Association of Chiefs of Police joined with the International Association of Campus Law Enforcement Administrators in 1982 in supporting our efforts relative to access to Computerized Criminal History. This august Association represents local police jurisdictions including state police organizations throughout the United States and are in total agreement of the need of campus law enforcement for access to NCIC in its entirety.

(2) In your testimony, you mentioned Texas as having legislation for commissioning private college and police officers. Are there any other states which have enacted similar legislation?

Answer: There are many other states that have similar legislation to that of Texas such as Pennsylvania, Utah, California, etcetera, however, regardless of state legislation establishing commissioned private college and university police departments, the inability to obtain computerized criminal history information from the National Crime Information Center is negated by the current wording of U.S. Code, Title 28, Section 534, and Title 28 Judicial Administration Chapter I.

(3) In your best estimate, do most major private university and college police officers across our nation currently meet their respective statutory requirements for fully commissioned peace officers?

Answer: Most major private university and college police officers across the nation currently meet or exceed statutory requirements for fully commissioned peace officers within their state jurisdiction. A present survey by IACLEA indicates a major portion of our membership of almost 1,000 college and university police departments exceed statutory requirements and are augmented by additional training in specialized professional law enforcement areas. In addition, state statutes will be one of the safeguards to insure dissemination abides within NCIC guidelines.

(4) Do private university and college police officers currently have access to data in the NCIC files, other than the Computerized Criminal History Files?

Answer: In June of 1981 the National Crime Information Center Advisory Policy Board accepted the reports of its sub-committee and recommended limited access in assignments of Originating Identifier Numbers with a suffix to private college and university police departments for accessing wanted persons, stolen property but not Computerized Criminal History. Appropriate publication was made in the federal register on September 16, 1981 specifying the specific changes and many of our members have applied through state control agencies for permission to maintain and access the information specified with the proviso that that access did not allow them Computerized Criminal History information.

Mr. LAMB. Mr. Chairman, I would like to give you the opportunity to query my colleagues——.

The CHAIRMAN. I cannot hear you. You will have to speak louder.

Mr. LAMB. I would appreciate it if you would query my colleagues of any additional remarks they might have at this time.

The CHAIRMAN. Now, let us see; I have got to leave here in about 7 minutes to open the Senate and I am going to let the staff member propound some questions here for the record.

Mr. Stokes, do you agree with what he has had to say?

Mr. STOKES. Yes, sir; I do. I would like to add that in 1977 when I was a member of the South Carolina Law Enforcement Division, I was also a member of the NCIC Advisory Policy Board, at which time we met; the APB met in Tampa, FL.

This issue came before the advisory policy board and we rejected it; me being at that particular time with the State law enforcement division, and the other members, had a misconception of really what campus police were.

We felt at that particular time that they were security officers and did not need access. In 1981, when I went to the University of South Carolina, I became more familiar with campus policing and, realizing the problems that are on college campuses now, totally support this bill so that they do have access to all of the files that are entitled to any police department meeting this criteria, sir.

The CHAIRMAN. As I understand it, you feel very strongly that this would be very helpful?

Mr. STOKES. That is correct, sir.

The CHAIRMAN. Now, Mr. Witsil, did you want to make a brief statement? Do you have a written statement?

Mr. WITSIL. I do not, Mr. Chairman.

The CHAIRMAN. Do you want to just make an oral statement just in a few minutes?

STATEMENT OF JERROLD L. WITSIL

Mr. WITSIL. I would just like to say that those of us in the private part of campus law enforcement feel that we have the need to have the access that has been described in previous testimony to these criminal history records in order that we can better protect the students and the members of our public on the campus.

It is significantly important to us, we think, that if, at 4 o'clock in the morning, we find someone outside of a dormitory who is committing no real, obvious crime that we learn all we can about that individual, who may not have an active want or warrant associated with him, but may have just been released from a penitentiary for a crime such as rape or robbery. We certainly support the bill, sir.

The CHAIRMAN. As I understand it, you strongly support this bill?

Mr. WITSIL. Absolutely, sir.

[Responses to written questions follow:]

Responses of Jerrold L. Witsil to Written Questions From Senator Mathias

1. "Is your position consistent with the United States Supreme Court's decision in Terry v. Ohio 392 U.S. 1 (1968) and its progeny?

   I believe that my position is consistent in that the test of Terry v. Ohio as pertaining to seizure is "would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" (Terry v. Ohio)

   In a guideline used by the Federal Bureau of Investigations in their course on constitutional law taught at the National Academy in Quantico, Virginia, a guideline for a reasonable stop includes the statement "You do not have to rely only upon the visible activity of a person. You may consider the area, the time of day, the knowledge you may have of the person, hearsay information or any other facts you may have." Certainly finding someone who is not a member of the college community who is found outside of a dormitory on the interior of the campus at four o'clock in the morning warrants further investigation.

2. "Why would a university police officer conducting a "Terry" stop under the circumstances you describe need to know more than whether there are any outstanding wants and warrants for the individual he detains?"

   We would want to know why he was on campus at such an hour in the area of residence halls. Knowing more about him would provide an opportunity to look for certain indications that a crime had been committed. If he had a record for sexual assault or rape, for example, the officers could concentrate on women's residence halls and talk to dormitory staff members to check and see that everyone is alright. We would also then communicate with off campus area police in case they had recently experienced a crime in their jurisdiction consistent with his criminal history.

3. "If the NCIC check on the person found in the scenario you described in your testimony reveals no wants or warrants but some kind of criminal history, what type of action would you recommend that the police officer take?"

   (See answer to number 2 above)

I hope this brief response to the Senator's questions provides requested information.

Sincerely,

Jerrold L. Witsil
Director of Public Safety

JLW/bjv

The CHAIRMAN. Now, that brings us down to Mr. Ingalls. Mr. Ingalls, I believe you have a written statement, do you not?

Mr. INGALLS. Yes, sir; and I would like to submit that for the record.

The CHAIRMAN. Now, we will put your entire statement in the record, and would you care to comment for 5 minutes on it?

STATEMENT OF RAYMOND C. INGALLS

Mr. INGALLS. Yes, sir; I do have a summary prepared. At this time, I would also like to point out that we have 13 representatives, executives, of railroad police departments representing a number of the major railroads here in the hearing room, also in support of S. 1203.

With your permission, sir, if I may, I would summarize my statement.

The CHAIRMAN. Do you want to summarize your statement? Speak in your microphone; we can hardly hear you.

Mr. INGALLS. All right, sir. My name is Raymond C. Ingalls and I am the chief of police for the National Railroad Passenger Corp. I appreciate the opportunity to appear before you today as a representative for the police section of the Association of American Railroads to testify in support of S. 1203, a bill that would allow railroad police and private university or college police access to the National Crime Information Center.

The Association of American Railroads is comprised of 26 class I carriers who transported over 1 billion gross tons of freight in 1984 and generated $28.5 billion in revenues.

Currently, 3,900 railroad police officers are employed by these carriers to protect property and cargo shipped on rail lines all over this country. According to the most recent AAR date published, railroad police arrested 89,000 persons and investigated losses estimated at over $9,277,000 in 1984.

As chief of police for Amtrak, I supervise the activity of over 400,000 railroad police officers charged with the responsibility of ensuring the life safety of the 20 million passengers who ride Amtrak trains each year.

This responsibility is shared with other railroad police agencies while Amtrak trains travel over their lines. Since Amtrak and other railroads own property and provide service in many major urban areas, the seriousness and types of crimes that we investigate are identical to the caseload of any city police department.

Prior to 1975, railroad police had access to all criminal files maintained by the Federal Bureau of Investigation. In 1975, Federal regulations restricted access to these files to those organizations which were specifically recognized as agencies of the State or Federal Government.

Railroad police currently have partial access to NCIC files and can use the Federal computer data bank to determine if certain property has been reported as stolen or determine whether a person who is being held is wanted in another jurisdiction.

Railroad police forces also have separate agreements with individual States to obtain either partial or complete access to their criminal history files. In the Northeast, for example, Amtrak police

officers have full access to the criminal data files of the State of New York and only partial access to the files in the State of Pennsylvania.

In the case of Amtrak, if a New York resident is suspected of committing a crime and removed from a train in the State of Pennsylvania, Amtrak police in Pennsylvania cannot determine if the suspect has a criminal history in his resident State because that information must be accessed through the Federal NCIC System, despite the fact that Amtrak has full access to New York files.

If that person happened to be taken off the train in New York, his criminal history would be made immediately available to the Amtrak police force.

I am not aware of any problems or instances of misuse that have arisen in States that grant railroad police full or partial access to their criminal files. In fact, the most common reason given by those States which deny full access to their files is that they simply wanted to develop guidelines that were consistent with Federal regulations.

S. 1203 is quite narrow in scope and would open up Federal files for railroad police and college or university police who perform the administration of criminal justice under State statutes and allocate a substantial part of their budgets to law enforcement activities.

I am not aware of any legitimate public policy justification for denying railroad police access to data in the National Crime Information Center. Railroad police contribute to law enforcement efforts at all levels of government to protect both property and life.

Do not be misled into thinking that these enforcement activities take place in deserted rail yards. In the case of Amtrak, over 90 percent of its police resources are employed to patrol railroad stations which are used by millions of passengers each year.

In addition, those persons who prey on railroad passengers or cargo shipped are often the same persons who are committing crimes off railroad property. Providing railraod police with the same resources and information as those in the purely public sector will only make law enforcement more efficient and effective.

That is the end of my statement.

[Prepared statement follows:]

Prepared Statement of Raymond C. Ingalls

Mr. Chairman and members of the Subcommittee: My name is Raymond C. Ingalls, and I am Chief of Police for the National Railroad Passenger Corporation (Amtrak). I appreciate the opportunity to appear before you today as a representative for the Police Section of the Association of American Railroads, to testify in support of S. 1203, a bill that would allow railroad police and private university or college police access to the National Crime Information Center (NCIC), federal government criminal identification records.

The Association of American Railroads (AAR) is comprised of 26 Class I Carriers who transported over one (1) billion gross tons of freight in 1984, and generated $28.5 billion in revenues.

Currently, 3,900 railroad police officers are employed by these carriers to protect property and cargo shipped on rail lines all over this country. According to the most recent AAR data published, railroad police arrested 89,900 persons and investigated losses attributed to incidents of theft and vandalism estimated at over $9,277,000 in 1984. As Chief of Police for Amtrak, I supervise the activity of over 400 railroad police officers charged with the responsibility of insuring the life safety of the 20 million passengers who ride Amtrak trains each year. This responsibility is shared with other railroad police agencies while Amtrak trains travel over their lines. Since Amtrak and other railroads own property and provide service in many of the major urban areas in this country, the seriousness and types of crimes that we investigate are identical to the caseload of any city police department.

/

Prior to 1975, railroad police had access to all criminal files maintained by the Federal Bureau of Investigation. Access to these files previously facilitated performance of duties and enabled railroad police to obtain important information regarding persons suspected of criminal activity under both federal and state Criminal Codes. In 1975, federal regulations restricted access to these files to those organizations which were specifically recognized as agencies of the state or federal government. Consequently, railroad police were precluded from using the NCIC and were confronted with a unique problem. On the one hand, the President's Conference on Transportation, each year was encouraging railroad police to enforce federal regulations governing multi-billion dollar cargo shipments, while simultaneously the Justice Department was restricting their use of criminal history records which would facilitate such enforcement.

In 1982, the International Association of Chiefs of Police (IACP), joined the efforts of the railroad police and the university and college police in order to gain access to the criminal history files maintained by the FBI. In response to these efforts, FBI Director, William Webster, wrote to Mr. Norman Darwick, Executive Director of IACP, advising that he did not oppose access to NCIC by either the campus or railroad police in those states where they are granted full peace officer status by state statute. A copy of Mr. Webster's letter is attached as Exhibit #1 to this statement.

This view was upported by actions taken early on by the Law Enforcement Administration Agency (LEAA), which determined that the railroad police played a legitimate role in overall efforts to enforce the Criminal Code in those states where full police powers were granted to them by the state. This led to acceptance of full participation by railroad police officers in LEAA funded projects at the state level so long as the officer was duly empowered in that state.

Railroad police must meet the same requirements and undergo the identical training that is required of municipal, county, or state

police officers in those states where we have full police powers. Amtrak police officers receive their basic training at the Federal Law Enforcement Training Center in Glynco, Georgia. Upon completion of this course, the officers then receive additional training in state supported or accredited training academies.

Railroad police currently have partial access to NCIC files and can use the federal computer data bank, for example, to determine if certain property has been reported as stolen, or determine whether a person being held is wanted in another jurisdiction. The same officer, however, cannot use that computer system to run a simple check on the suspect's criminal history. Individual state law enforcement agencies compile similar data, including computerized criminal histories, and supply this information to the NCIC which makes it available to police departments across the country.

Railroad police forces have also successfully negotiated separate agreements with individual states to obtain both partial and complete access to criminal files that the states compile and maintain. In the Northeast, for example, Amtrak police officers have full access to criminal data files in the State of New York, and only partially access to files in the State of Pennsylvania. Due to the nature of the railroad industry which provides extensive service in all 48 contiguous states, a number of anomalies have arisen. In the case of Amtrak, if a New York resident is suspected of committing a crime and removed from a train in the State of Pennsylvania, Amtrak Police in Pennsylvania cannot determine if the suspect has a criminal history in his resident state because that information must be accessed through the federal NCIC system, despite the fact that Amtrak has full access to New York files. If that person happened to be taken off the train in New York, his criminal history would be made immediately available to the Amtrak police force. This is just one example of the problems created by approaching states on an individual basis for assistance with respect to an industry that, more than ever, provides an interstate service.

I am not aware of any problems that have arisen in states that grant railroad police full or partial access to their criminal files. In fact, the most common reason given by those states which deny full access to their files is that they simply wanted to develop guidelines that were consistent with federal regulations.

The Police Section of the Association of American Railroads strongly supports the passage of S. 1203 which was introduced by Senator Strom Thurmond and would specifically provide university, college and railroad police access to the National Crime Information Center (NCIC). The legislation is quite narrow in scope and would open up Federal files to railroad police and college or university police who perform the administration of criminal justice under state statutes and which allocate a substantial part of their budgets to law enforcement activities. Under the bill, each police officer in the force would have to meet the minimum standards for a police officer in that respective state.

I am not aware of any legitimate public policy justification for denying railroad police access to data in the National Crime Information Center. Railroad police contribute to law enforcement efforts at all levels of government to protect both property and life. Don't be misled into thinking that these enforcement activities take place in deserted rail yards. In the case of Amtrak, over 90% of its police resources are employed to patrol railroad stations which are used by millions of passengers each year. In addition, those persons who prey on railroad passengers or cargo shippers are often the same persons who are committing crimes off railroad property. Providing railroad police with the same resources and information as those in the purely public sector will only make law enforcement more efficient and effective.

ATTACHMENT:

Exhibit I - Letter dated August 24, 1982 from William H. Webster, Director, FBI

EXHIBIT I

U.S. Department of Justice

Federal Bureau of Investigation

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REYNOLDS
ANT POLICE-PHILA

Mr. Norman Darwick
Executive Director
International Association of
Chiefs of Police, Inc.
Thirteen Firstfield Road
Gaithersburg, MD 20878

Dear Norm:

Reference is made to my letter to you, dated July 1, 1982, and your telephone call to Executive Assistant Director Lee Colwell on August 10, 1982, concerning the FBI's position on private railroad and campus police access to criminal history records. As you are aware, an Office of Legal Counsel (OLC), Department of Justice (DOJ), legal interpretation of Menard v. Mitchell, 328 F. Supp. 718, and its impact on 28 USC 534 resulted in private corporations including railroad and campus police being denied access to criminal history records maintained by the FBI. I am aware that in many states these police forces are granted full peace officer status by state statute and must meet the same minimum employment standards required of police officers. In these instances, I do not oppose Federal criminal history access and consider it anomalous that the above-described legal prohibition exists.

Railroad and campus police access to state and local criminal history information maintained at the state level is a separate issue and is dependent on state law. This authority becomes more important should the Interstate Identification Index concept now being tested be implemented nationally. Increased access to state-maintained records through this national index will be primarily dependent on state law where the record is maintained.

As I indicated in my previous letter, I will defer to Assistant Attorney General Theodore B. Olson, OLC, DOJ, regarding legal considerations on furnishing criminal history record information to nongovernmental agencies including the need for new legislation to authorize access.

Sincerely yours,

William H. Webster

William H. Webster
Director

Responses of Raymond C. Ingalls to Written Questions From Senator Thurmond

1) HOW WOULD THIS LEGISLATION AFFECT RAILROAD POLICE OFFICERS IN THEIR DAY-TO-DAY ACTIVITIES?

This legislation would enhance the safety of railroad police officers in the conduct of their duties. Railroad police officers, like their public counterparts, are responsible for making arrests and conducting investigations. Access to the criminal history files would assist officers in approaching persons suspected of committing a crime. The officer would be able to discover in advance if the suspect had, in the past, exhibited dangerous behavior such as resisting arrest, violent acts, or weapons violations, and take appropriate precautions.

Railroad police suffer a significant number of injuries each year in the course of their duties. Access to the criminal history files would enable railroad police to avoid those injuries incurred during investigations where prior knowledge of a suspect's criminal history would warn of the likelihood of such occurrence. The Federal Railroad Administration reported that in 1984 (the last year the complete figures are available), 343 railroad police officers were seriously assaulted. Amtrak police alone lost more than 2,000 man days of work in FY 1985 due to line of duty injuries incurred while making arrests.

Criminal history information also can be helpful in an investigation. For example, criminal history information helps determine an informant's credibility and can be critical in the development of probable cause for a subsequent arrest. In some states, prior criminal history would determine whether a current crime is classified as a

misdemeanor or a felony. In fact in some jurisdictions prior criminal history is an element in statutes against racketeering or organized crime.

This legislation would assist investigators by providing them with information on methods of operation, behavioral patterns and known criminal associates. Criminal history information would also assist the railroad police in the prevention and handling of terrorist activities, which have become a serious threat in recent years, and in the handling of hostage situations.

2) YOU MENTIONED IN YOUR TESTIMONY THAT SOME AGREEMENTS HAVE BEEN NEGOTIATED BETWEEN THE RAILROAD POLICE AND INDIVIDUAL STATES TO SHARE CRIMINAL INFORMATION. EVEN WITH THESE AGREEMENTS, WHAT PROBLEMS DO YOU ENCOUNTER WHEN, FOR EXAMPLE, YOU ARREST AN INDIVIDUAL IN ONE STATE, YET HE IS ACTUALLY A RESIDENT OF ANOTHER STATE?

This point may perhaps best be explained by an example. Amtrak police officers have full access to criminal data files in the State of New York, but only partial access to files in the State of Pennsylvania. If a New York resident is suspected of committing a crime and removed from a train in the State of Pennsylvania, Amtrak police in Pennsylvania cannot determine if the suspect has a criminal history in New York because that information is available only through the federal NCIC system. The Amtrak police office in Pennsylvania cannot call the Amtrak police desk in New York to obtain the criminal history of the suspect because Amtrak's user agreement with New York requires that the suspect be in custody in that state where the inquiry is made. If that person happened to be taken off the train in New York, his criminal history would be made immediately available to the Amtrak police force. This is typical of problems that would arise under other state agreements and

exemplifies the difficulty of trying to resolve this matter on a state-by-state basis. This is just one example of the problems created by approaching states on an individual basis for assistance with respect to an industry that, more than ever, provides an interstate service.

3) WHAT ECONOMIC IMPACT DO YOU SEE THIS LEGISLATION HAVING AS IT RELATES TO SAFETY AND EFFICIENCY WITHIN THE RAILROAD POLICE FORCE?

By enhancing the effectiveness and efficiency of some 4,000 railroad police officers, this legislation would have a very positive economic impact. Combatting crimes against the railroads, requires the collective efforts of federal, local and railroad police forces. Through removing the current limitation on access to information applied to railroad police forces, the other law enforcement team members would benefit accordingly.

The economic impact on safety is significant. In addition to the human suffering, injuries to Amtrak police in FY 1985 cost the corporation over $328,000. If a railroad police officer is out due to an injury, certain posts must be filled and are often filled by officers who must be paid overtime. This does not include the costs that police departments and their railroads pay for medical expenses.

I believe that Amtrak's experience is typical, and these statistics indicate that the rail industry as a whole, suffers a great economic loss from violence directed against police officers. This proposed legislation obviously would not eliminate injuries to railroad police officers, but it would go a long way toward reducing those injuries by forewarning the officer in many cases of the potential danger.

Senator SPECTER [presiding]. Thank you very much, Mr. Ingalls. Senator Thurmond had to leave to open up the Senate and you are the concluding witness, of course.

Do any of you gentlemen know of any concerns or objections raised by any student groups in opposition to this proposed legislation?

Mr. LAMB. No, sir.

Senator SPECTER. Or any consumer or passenger groups that might be affected by it?

Mr. LAMB. No, sir.

Senator SPECTER. Have any issues been raised on any sort of civil liberties grounds?

Mr. LAMB. No, sir.

Senator SPECTER. Well, I understand that you have all testified about the necessity for having access by railroad police and private universities and colleges to these criminal records.

The record will remain open for the course of 2 weeks due to Senator Thurmond's request, to give Senators who could not be here this morning the opportunity to file questions.

There was a meeting at the White House where the President met with all the Republican Senators which has occasioned the absence of some members from this committee hearing.

The Senate has just returned into session, as you know, yesterday, so it is a very busy and a complex time here. I do not want you to think that because there are not more Senators on the Judiciary Committee present today that this matter is not one of great concern as an aid in law enforcement and an aid to the enforcement activities of the institutions which you men represent.

But we will allow the record to remain open for a period of 2 weeks to give other Senators a chance to propound questions, and we thank you all very much for coming and that concludes the hearing.

[Whereupon, at 10:55 a.m., the subcommittee was adjourned.]

APPENDIX

EPI
ELECTRONIC PROCESSING INCORPORATED

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February 25, 1986

Hon. Strom Thurmond
Chairman, Senate Judiciary Committee
Washington, D. C.

Dear Mr. Chairman:

I take the liberty of writing to communicate to you my interest in, and support of, legislation that you have sponsored which is designed to expand the availability of federal criminal identification records to private entities which have legitimate need for access to such records for law enforcement and public protection purposes. I specifically refer to S. 1203, your bill introduced in the Senate on May 23rd, 1985.

My company -- Electronic Processing, Inc. -- now provides computerized background search cabability to a number of private protective services firms in California. As a provider of such services, we are keenly aware of the need for properly controlled access to federal criminal history records by a variety of agencies that, while not official law enforcement entities, have a legitimate need for the information contained therein in order to fulfill their responsibilities to the public. Not only do we support the provisions of S. 1203, but we also recommend expansion of its coverage to include private security firms providing services under the auspices of state statutory or regulatory authority.

I include herewith brief testimony in support of S. 1203, and amendment thereof as suggested above. I request that this letter, and the accompanying testimony, be made a part of the hearings record on S. 1203.

Sincerely,

Doug Comer
Chief Executive Officer

DC:vl

Encl.

cc: Mr. William Bertsche
Guardcheck, Inc.
Anaheim, CA

TESTIMONY OF DOUGLAS B. COMER, CHIEF EXECUTIVE OFFICER, ELECTRONIC PROCESSING, INC., IN SUPPORT OF S. 1203

MR. CHAIRMAN:

I thank the Chairman for the opportunity to present written testimony in support of the provisions of S. 1203, legislation that would enable private entities that exercise limited law enforcement functions to access federal criminal history files.

Witnesses who have appeared before the Committee have adequately stated the need for amendment of the language of Section 534 of Title 28, United States Code to include within its coverage railroad police and police departments of private colleges and universities. The very important law enforcement responsibilities of these entities -- although limited in scope -- require access to reliable, up-to-date criminal history files in order that the public security functions which they are charged with are performed in the most effective way possible. I will focus my testimony upon the advisability of amending S. 1203 to bring within its scope private security agencies.

Electronic Processing, Inc. has -- for a number of years -- maintained a centralized database of critical information relevant to proper assessment of the qualifications of prospective employees of private security firms on the West Coast. This database -- accessed under proper security restrictions by the management of private security firms participating in the service -- contains not only identification information on persons convicted of felony offenses, but also employment history information on persons who have been employed by security firms that are currently unemployed. The information on felons is presently provided to our company by state

authorities in paper format, while employment information -- such as length of service, reason for termination, and company position on re-hiring -- is provided by the last private security service employer of record. This information is available, in an on-line environment if desired, to participating companies who are considering employment of a given individual for purposes of employability evaluation. The service we provide has been very effective in reducing the percentage of undesirable applicants at those firms that participate, for the simple reason that persons who have criminal backgrounds or are poor employment risks for reasons related to their performance in prior security positions are aware that such negative information will be known to a participating, prospective security employer within a very short time after application for employment is made. In turn, those firms that do participate in the program are able to offer a higher degree of security reliability than those who do not participate.

The value to the public of the service which we offer to private security firms is thus readily seen. In today's law enforcement environment, private security services are responsible for protection of more private and governmental institutions with strict security requirements than conventional law enforcement authorities. Security firms which utilize the service we provide have responsibility for providing protection for such entities as major defense contractors, nuclear facilities, and high-tech research and development operations; not to mention more conventional customers such as banks, major corporations who are the target of corporate espionage, and manufacturing firms. In these environments, as well as many others not mentioned, the importance of thorough background checks on private security personnel is vitally important. And yet in most companies,

such background checks as are performed are woefully inadequate. Information obtained is frequently incomplete, out-of-date, or simply erroneous. This is partially the result of inefficiencies in government bureaucracies and partially the result of indifference on the part of security firms that have inefficient management. Even under the best of circumstances, absent the type of service that our company provides, serious infractions of security integrity of a private firm may occur through state laws and regulations that permit guard applicants to obtain temporary permits to carry weapons while applications are being researched. In California, for instance, this is permitted and the background investigations performed through inquiry to the state can take up to two months or longer to complete. During the time delay between application and completion of this background check, a convicted felon may obtain a weapon, commit a crime, and escape the jurisdiction of the state -- all while carrying a temporary permit to perform security services under color of state law.

This is the problem that a centralized criminal history database addresses. Such a database -- with access properly restricted to management of companies whose integrity has been established by prior state investigation -- would be invaluable in ensuring the integrity of private security services and would contribute to their performance of the law enforcement responsibilities that are delegated to them by state law and contract. Limited ("look only") access by such companies and their telecommunications providers (such as E.P.I.) to the National Crime Information Center database would be a major step forward in enhancing the quality of law enforcement services provided

by such companies to the public. In fact, I would go beyond that to state that it is my personal opinion that private security firms should be required by state law and regulations to research the background of prospective employees through access of computerized criminal history files such as N.C.I.C.

Such access would be fully consistent with the intent of the Omnibus Crime Control and Safe Streets Act of 1968 which provided the initial authorization for the creation of the N.C.I.C. database. That legislation specifically recognizes the legitimate law enforcement role of private security services and their beneficial impact upon federal programs and law enforcement efforts. The apprehension, detention, investigation and ultimate prosecution of criminal acts that are directed against private entities that are involved in substantial government contracts is obviously a matter of priority for federal law enforcement agencies. Any steps which enhance either 1) the integrity and reliability of private companies performing limited law enforcement functions for such entities, or 2) their effectiveness in apprehending persons involved in criminal acts perpetrated against those entities are to be desired and are consonant with the objectives of the Omnibus Crime Control and Safe Streets Act.

Therefore, on behalf of Electronic Processing and the many private security firms that we serve who are dedicated to enhancing the integrity and quality of service provided within their industry, I urge the Committee to amend the text of S. 1203 by adding a new subparagraph "3" to the legislation's definition of the term "other institutions", to read as follows:

"(3) Private sector companies which perform the

administration of justice pursuant to state statutory or regulatory authorization on a contract basis for other private sector companies, and which allocate a substantial part of their annual budget to the provision of such services as relate to the administration of criminal justice which they are permitted to provide under such statutory or regulatory authorization."

I would further recommend to the Committee that the legislative history accompanying the proposed amendment to S. 1203 make clear that telecommunications providers such as E.P.I., which perform database administration functions for private security customers who desire to access information of the type maintained by N.C.I.C., come within the purview of the amendment.

Mr. Chairman, I thank you for this opportunity to present testimony in support of the legislation.